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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

July 23, 2007

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FACSIMILE (202) 546-1218

The Graham Williams Group
Attn: Armstrong Williams, Chief Executive Officer
201 Massachusetts Avenue, N.E.
Suite C-3
Washington, D.C. 20002

Re: File No. EB-05-IH-0031

Dear Mr. Williams:

This is an official **CITATION**, issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended ("the Act"), for violations of the statutes and rules administered by the Federal Communications Commission ("Commission") that govern sponsorship identification in broadcast programming.¹ Future violations of these statutory provisions and Commission rules may subject you and your company to monetary forfeitures. As explained below, you may appeal this citation.

The Enforcement Bureau (the "Bureau") investigated whether various parties, including certain licensees of radio and television stations and cable operators, may have violated provisions of the Act, and the Commission's rules in connection with the airing of program material and announcements concerning the No Child Left Behind ("NCLB") law administered by the United States Department of Education ("DoED"). Specifically, we investigated whether such licensees and operators aired the material without appropriately announcing that DoED was that material's sponsor and whether certain parties involved in the production and distribution of the program material, including Mr. Armstrong Williams ("Williams") and the Graham Williams Group ("GWG"), failed to make related disclosures required under the law.²

¹ See Sections 317 and 507 of the Communications Act of 1934, as amended, codified at 47 U.S.C. §§ 317 and 508, respectively, and Section 73.1212 of the Commission's rules, 47 C.F.R. § 73.1212.

² *Id.* As to the disclosure obligation, Section 507(c) of the Act provides in pertinent part:

[A]ny person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter. . . .

As a part of this investigation, by letters of inquiry dated February 14, 2005 (“LOIs”), we requested certain information and materials from GWG and Ketchum, Inc. (“Ketchum”). GWG and Ketchum responded to those LOIs, providing various pertinent documents and recordings.³ GWG contended in its Response that it did not violate any statute or Commission rule and that, in any event, it was “not subject to the FCC’s jurisdiction.” Notwithstanding GWG’s jurisdictional objection, the Commission has the responsibility, and the legal authority, to investigate and to enforce the above-noted provisions of the Act and its rules, including Section 507 of the Act.⁴

Our investigation focused on GWG’s performance and that of Ketchum pursuant to the following agreements: (1) the “Order for Supplies or Services” dated May 14, 2003, as amended on January 6 and June 9, 2004, between Ketchum and DoED;⁵ and (2) contracts between GWG and Ketchum dated December 2, 2003, and June 29, 2004.⁶ By these agreements, Ketchum served as the general contractor to DoED to implement its campaign promoting NCLB and GWG acted as a subcontractor to Ketchum in this endeavor.

In response to our inquiry, GWG has provided documentary evidence, including recorded program material, that details numerous instances where GWG’s principal, nationally syndicated broadcast commentator Williams, apparently promoted NCLB during various programs in which he appeared without identifying such comments as being sponsored.⁷ Moreover, the broadcasters to whom such material was supplied assert that they were not informed that the NCLB comments were sponsored by DoED and that they did not, therefore, air sponsorship announcements for the NCLB material.⁸ GWG argues, however, that in none of these instances

47 U.S.C. § 508(c).

³ See Letter from GWG to Kenneth M. Scheibel, Jr., Attorney, Investigations & Hearings Division, Enforcement Bureau, dated April 6, 2005 (“*GWG Response*”), and Letter from Ketchum to William D. Freedman, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, dated April 13, 2005 (“*Ketchum Response*”).

⁴ Section 507’s disclosure obligations, and hence our jurisdiction, extend to “any person” engaged in the conduct described in that provision, not just licensees or regulatees of the Commission. See 47 U.S.C. §§ 503(b)(1)(B) (authorizing FCC to impose a forfeiture penalty on any person who has “willfully or repeatedly failed to comply with any of the provisions of this Act”), 508(g) (“Any person who violates any provision of this section shall, for each such violation, be fined not more than \$10,000 or imprisoned not more than one year, or both.”). See also *id.* at § 503(b)(5) (before imposing a forfeiture penalty on a non-licensee, FCC must issue a citation to non-licensee and non-licensee must subsequently engage in prohibited conduct). Ketchum’s contention that the Commission has no authority to enforce Section 507 because it is a criminal provision over which the Department of Justice has primary jurisdiction simply overstates the case. The Commission recognizes the jurisdictional responsibilities of the Department of Justice and its sole authority to bring criminal cases, but it also has a long history of exercising concurrent administrative jurisdiction where provisions in the Communications Act include civil and criminal penalties. See, e.g., our administrative enforcement of the criminal provisions governing the broadcast of indecent, obscene or profane material at 18 U.S.C. § 1464, referenced in Sections 503(b)(1) and 312(a)(6) of the Communications Act.

⁵ See *GWG Response*, Tab 1.

⁶ See *Ketchum Response*, Tab 9; see also *GWG Response*, Tab 3.

⁷ See, e.g., *GWG Response*, Tab 21.

⁸ We note that in November 2006 and May 2007, the Bureau inquired of 15 licensees of 60 television stations concerning eight specific episodes of “Right Side with Armstrong Williams,” and one episode of

were sponsorship disclosures required because Williams' comments were not paid for or otherwise compensated. GWG contends that its contract with DoED specified only that it would furnish "two (2) television and two (2) radio advertisements featuring a one-minute read by Secretary Paige" regarding the [NCLB] program, and would "include the television spot 'on all of Mr. William's [sic] cable television affiliates.'" ⁹ GWG further asserts that advertisements on "The Right Side with Armstrong Williams" ("RSAW") "were to be included as a bonus in the radio runs of the television show," but that they were not specifically required. ¹⁰ GWG notes in support of its contentions that "the Deliverables under SOW #9 and SOW#16 do not specify delivery of any comments on NCLB, other than placement of the DoED ads," and those advertisements included appropriate sponsorship disclosures. ¹¹

The evidentiary record, however, belies GWG's explanations. In this connection, the pertinent contract statements of work ("SOW") indicate that the parties mutually intended that GWG and/or Williams would devise and broadcast promotional messages on behalf of NCLB beyond the provision of discrete advertisements. ¹² Furthermore, contrary to its explanation, GWG's promise that Williams would deliver such on-air commentary appears to have been specifically contemplated in the contract, and not gratuitously supplied by GWG. ¹³ Moreover, GWG's and Ketchum's own correspondence contains numerous references that support a finding that the contract work requirements contemplated the preparation and delivery of comments on NCLB in addition to the production and placement of discrete NCLB advertisements. ¹⁴ Finally, we note that GWG's monthly reports to DoED appear to report on the totality of broadcast promotional efforts made on behalf of NCLB as having satisfied GWG's contract duties, and not merely its placement of specific advertisements. ¹⁵ We find GWG's explanations that its monthly reporting efforts, made over a year-long period, "were incorrect in listing all of [Williams's] media interviews and activities and automatically includ[ing] them," ¹⁶ or that Williams only "realized for the first time" such significant reporting errors in January 2005, after this matter was disclosed by the national press to be unpersuasive. ¹⁷

"America's Black Forum," during which Williams discussed NCLB. In their responses, the licensees who received such programming from GWG uniformly denied that GWG furnished any sponsorship identification announcement or other information concerning Williams' relationship with DoED and/or the NCLB comments.

⁹ See *GWG Response* at 4.

¹⁰ See *id.*

¹¹ See *GWG Response* at 9. This citation addresses GWG's failure to identify as sponsored numerous intra-program mentions and discussion of NCLB. We do not dispute its contention that the television advertisements it prepared concerning NCLB, featuring DoED Secretary Paige, contained appropriate sponsorship acknowledgments.

¹² See SOW # 9 (Attachment B to January 24, 2004, Amendment of Contract between DoED and Ketchum).

¹³ See *Ketchum Response*, Tab 2.

¹⁴ See, e.g., *GWG Response*, Tabs 6 and 8; *Ketchum Response*, Tab 24.

¹⁵ See *GWG Response*, Tab 11.

¹⁶ See *GWG Response* at 4-5.

¹⁷ See *id.*

In sum, the record here establishes that Williams and GWG received more than nominal consideration from DoED¹⁸ to include particular material in programming supplied to and intended for transmission by broadcast stations and that the material was, in fact, aired by various broadcast stations.¹⁹ In these circumstances, Williams and GWG were obliged under Section 507(c) to disclose to the licensees receiving the programming that the NCLB-related broadcast material was sponsored by DoED.²⁰ The record also establishes that such disclosure was not provided by either Williams or GWG. We conclude that GWG and Williams violated Section 507 of the Communications Act.

If, after receipt of this citation, you or your company violates the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation.²¹

You may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. You may use this response to appeal this citation. In addition, your response should specify the actions that you are taking to ensure that you do not violate the Commission's rules governing sponsorship identification in broadcast programming, as described above.

You may schedule a personal interview at the nearest Commission field office. These offices are located in: Atlanta, GA; Boston, MA; Chicago, IL; Columbia, MD; Dallas, TX; Denver, CO; Detroit, MI; Kansas City, MO; Los Angeles, CA; New Orleans, LA; New York, NY; Philadelphia, PA; San Diego, CA; San Francisco, CA; Seattle, WA; and Tampa, FL. Please call Hillary S. DeNigro at 202-418-7334 if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

¹⁸ *GWG Response*, Tab 3; *Ketchum Response*, Tab 9.

¹⁹ The broadcast stations that aired all or part of such material without providing appropriate sponsorship identification, include one licensed to Sonshine Family Television, Inc. - WBPH-TV, Bethlehem, Pennsylvania, which aired 5 episodes of RSAW; several licensed to subsidiaries of Sinclair Broadcast Group, Inc. - WABM(TV), Birmingham, Alabama; KSMO-TV, Kansas City, Missouri; WVTM(TV), Milwaukee, Wisconsin; WUXP-TV, Nashville, Tennessee; KOCB(TV), Oklahoma City, Oklahoma, WEAR-TV, Pensacola, Florida; WPMY(TV), Pittsburgh, Pennsylvania; KABB(TV), San Antonio, Texas; and WTWC-TV, Tallahassee, Florida, all of which aired one episode of ABF; and one licensed to Glory Communications, Inc. - WGCN(AM), Cayce, South Carolina, which aired an audio version of 8 episodes of RSAW and one episode of ABF. Glory indicates that it provided an announcement identifying GWG, but not DoED, as the material's sponsor. See also note 8, *supra*.

²⁰ Although in this case certain broadcast stations actually aired the subject material, this is not a prerequisite to a finding of violation of Section 507(c). That provision states that disclosure is required whenever any person supplies program material "which is intended for broadcast..." 47 U.S.C. § 507(c).

²¹ See 47 C.F.R. § 1.80(b)(3).

Hillary S. DeNigro
Chief, Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554

You should reference EB-05-IH-0031 when corresponding with the Commission.

If you request a meeting, reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty)

For accessible format materials (braille, large print, electronic files, and audio format): 202-418-0531 (voice), 202-418-7365 (tty)

As required by the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), you are hereby notified that the Commission's staff will use all relevant material information to determine what, if any, enforcement action is required to ensure your compliance with the Commission's rules. This will include any information that you disclose in your interview or written statement.

Finally, you should be aware that the knowing and willful making of any false statement or the concealment of any material fact in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Sincerely,

Kris Anne Monteith
Chief, Enforcement Bureau

cc: Colby M. May, Esq.